



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

House Bill 6033-42 (As Introduced)

Topic: Cemetery Regulation

Sponsor: Representatives Sak, Farrah, Hammon, Condino, Cushingberry, Virgil Smith, and Wojno

Co-sponsors: Representatives Shaffer, Amos, Pavlov, Knollenberg, Green, Meadows, Dean, and Accavitti

Committee: House Regulatory Reform

Date Introduced: May 1, 2008

Date of Summary: May 6, 2008

House Bill 6033 makes general amendments to the Cemetery Regulation Act. The rulemaking authority of the Cemetery Commissioner would be enhanced by the addition of good moral character and financial security and stability, and responsibility, of the actual or proposed person directly or indirectly controlling the cemetery; requirements for trust agreements; trust funds or accounts, and the provision of perpetual care. The power of the Cemetery Commissioner to request a subpoena is also strengthened. The Commissioner would be authorized to issue a subpoena to require appearance, testimony, or the producing of relevant documents at an administrative hearing or proceeding. Such a subpoena could be enforced in the courts.

A new subsection lists a number of permissive duties for the Commissioner. These include:

- Conducting reasonable and necessary investigations to determine whether a person has violated or *is about to* violate any provision of the act or a rule or order issued under the act.
- Requiring or allowing a person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to the facts and circumstances.

The Commissioner has the authority to control, manage, and dispose of or transfer an abandoned cemetery or require acceptance of responsibility for an abandoned cemetery. The Commissioner would have the authority to promulgate rules related to abandoned cemeteries.

An authorized employee or agent of the department, who is an attorney, may represent the Commissioner or the department in an investigation or proceeding. Any person required to take an oath or affirmation and who does so falsely is considered to have committed perjury.

The bill adds several items to the list of sanctions that can be imposed by the Commissioner, including limiting a license, assessing administrative fines, replenishing a trust fund deficit, and issuing an order prohibiting the withdrawal or transfer of trust fund money. The bill provides for an administrative process for the imposition of sanctions which includes a conference prior to a contested case hearing at the option of the licensee. A settlement at a conference is subject to Commissioner approval.

The bill contains explicit language strengthening current language relating to appointment of a receiver or conservator and the duties and responsibilities of that person. These duties and responsibilities include:

- Take possession of books, records, and assets.
- Employ staff, agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel and fixing their reasonable compensation.
- Collect, defend, compromise, and settle all debts or claims related to the cemetery, cemetery owner, or other person who actively participated in, and benefited from a violation.
- Sell any and all real and personal property.
- Borrow money on the security of assets related to the cemetery, cemetery owner, or other person who actively participated in, and benefited from a violation.
- Exercise fiduciary functions.
- Exercise other powers and duties as may be provided by the court.
- Pay all expenses of the receivership or conservatorship.
- Pay debts on a pro rata basis, except debts not exceeding \$50 may be paid in full without interest.
- Borrow money to aid liquidation of the cemetery, cemetery owner, or other person who actively participated in, and benefited from a violation.
- Use assets under a liquidation order to transfer obligations.
- Enter into contracts necessary to carry out the order to liquidate and affirm or disavow any contracts to which the cemetery, cemetery owner, or other person who actively participated in, and benefited from a violation is a party.
- Delay the sale of assets if it is determined that delay would be prudent in order to obtain a more favorable rate of return on the sale of assets.
- Regularly report to the Commissioner.
- Other reasonable and necessary actions and powers permitted by law.

In the event that it appears that a crime has been committed, the Commissioner is required to immediately report it to the Attorney General or prosecuting attorney. The Attorney General or prosecuting attorney is required to take such action as the facts warrant. Cooperation with the Commissioner by other public officials is required.

The Commissioner may appoint deputy commissioners and assistants and engage consultants. The Commissioner may select and appoint a receiver or conservator, subject to court approval.

The Commissioner has civil liability immunity under certain conditions. These conditions include:

- The actions occurred, or were reasonably believed to be, within the scope of authority.
- The conduct did not amount to gross negligence.

Reference is made to the Government Liability for Negligence Act. Legal representation is to be provided by the Attorney General or a Special Assistant Attorney General. If a judgment is awarded or settlement entered into, the state is required to indemnify the Commissioner, unless the actions failed to meet the conditions established. The immunity does not apply to those acting as a receiving, conservator, or other contract staff.

The bill makes changes to the form of the application for a cemetery license and provides for a nonrefundable \$1,500 processing and investigation fee for both a new license and a change in control. The annual fee for a registered cemetery is \$100.

The bill makes changes related to the maintenance of trust funds. A deposit of at least \$75,000 is required into an irrevocable endowment care or perpetual care trust fund before sale of any burial, entombment, or columbarium rights. The cemetery owner is required to pay not less than 15 percent of all proceeds received from sales of these services on a monthly basis. The minimum amount paid into the trust fund may not be less than \$20. The 15 percent contribution or \$20 minimum may be waived by application to the Commissioner.

The bill creates a Cemetery Regulation Fund.

Each trust fund required must be under the control of at least two trustees, at least one of whom must be a Michigan resident. One of the trustees must also be licensed in Michigan as a certified public accountant, attorney, investment advisor, or securities broker or dealer. A non-banking corporation may act as a fiduciary for a cemetery if approved to do so under the Banking Code. Alternatively, the Commissioner may accept a surety bond as a guarantor of performance by trustees not meeting the requirements of the bill.

Assets of trust funds are required to be invested pursuant to the Estates and Protected Individuals Code. Separate accounts are required for each cemetery for all required accounts. Bundling or pooling of trust funds is not permitted except upon terms and conditions approved in writing by the Commissioner. The Commissioner must be satisfied that the title to, character of, and accounting for each trust fund is preserved.

Good moral character is added to the reasons for denial of an application.

An administrative fine of up to \$10,000 is provided in the bill for each violation. A violation is classified as a misdemeanor and is punishable by a fine of not more than \$10,000. If the violation is by an individual, punishment may also include imprisonment for not more than one year. A violation involving misuse of trust accounts is a violation of the Penal Code.

Section 11 of the act is repealed. This section provides for registration renewals.

The other bills in the package amend other statutes related to the Cemetery Regulation Act, including:

- Public Act 87 of 1855 (burying grounds)—House Bills 6034 and 6040
- Public Act 12 of 1869 (rural cemeteries)
- Revised Judicature Act
- Michigan Penal Code
- Business Corporation Act
- Public Act 58 of 1915 (crematories)